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Contents

AICHR After Five Years: Progress, Challenges and Opportunities

This article discusses both the achievement and problems of the ASEAN Intergovernmental Commission on Human Rights (AICHR). The on-going review of AICHR's terms of reference should deal with issues that affect the capacity of the institution to address to some extent the human rights problems in Southeast Asia.

- Yuyun Wahyuningrum

Page 2

Human Rights System for SAARC: Problems and Perspectives

This essay examines the possibility of establishing a human rights mechanism for South Asia through the South Asian Association for Regional Cooperation (SAARC). Unlike ASEAN, SAARC has not considered adopting a human rights charter and/or a human rights mechanism. The numerous problems within and across the borders of the SAARC member-states seem to pose a serious hurdle to having such human rights mechanism.

- Gyan Basnet

Page 7

Merging Business and Human Rights in China: Still A Long Way to Go

This is an excerpt of the report of the same title included in the recent publication of HURIGHTS OSAKA - Bridging Human Rights Principles and Business Realities in Northeast Asia (2014). The article discusses the legal support for the Chinese companies' adherence to human rights principles under international initiatives such as the United Nations Global Compact and ISO 26000, and the case of PetroChina.

- Huang Zhong and Qian Cheng

Page 11

Human Rights Events in the Asia-Pacific

This is information on important human rights events in the region.

Page 15

Editorial

Subregional Human Rights Mechanism

An effective regional or subregional human rights mechanism must satisfy several major criteria including having members who have the experience and competence in the field of human rights; mandate to promote human rights and investigate complaints of human rights violations; and sufficient resources to perform the tasks.

These criteria are also important in ensuring the independence of a regional or subregional human rights mechanism.

The ASEAN Intergovernmental Commission on Human Rights (AICHR) has been questioned for not being active enough in addressing human rights issues in Southeast Asia. Indeed, AICHR should have made a major impact in the subregion if it had actively intervened in a variety of ways on the human rights issues plaguing ASEAN member-states.

AICHR is a body consisting of government-appointed "Representatives" and has no mandate to hold accountable an ASEAN member-state for human rights violations.

Yet, AICHR has the "Mandate and Functions" to assert its important role in the subregion. It has the capacity to influence governments to address the human rights issues existing in the different countries. It has the capacity to mobilize existing resources, including the non-governmental institutions, in pursuing its objectives.

There is more to expect from AICHR.

AICHR After Five Years: Progress, Challenges and Opportunities

Yuyun Wahyuningrum

The establishment of the ASEAN Intergovernmental Commission on Human Rights (AICHR) in 2009 was perceived as part of the subregional architecture that would address subregional concerns and cement standards and practices in support of national level initiatives on developing a mindset favorable to the fulfillment of human rights. AICHR adopted a five-year work plan (2010-2015), which included the study of priority issues in the subregion such as corporate social responsibility, migration, human trafficking, child soldiers, women and children in conflict and natural disaster situations, juvenile justice, right to health, right to education, right to life and right to peace. The report on corporate social responsibility was discussed in a subregional consultation with representatives of AICHR, civil society and academe on 13-14 June 2014 in Singapore before submission to the ASEAN Ministerial Meeting (AMM). The study on migration and human rights is still ongoing, while concept notes on other topics have been adopted in previous AICHR meetings in 2013.

Despite the fact that AICHR is not mandated to address human rights issues in specific countries, it held a retreat in March 2013 to discuss the case

of Sombath Somphone of Lao PDR¹ who has been missing since December 2012 and the Rohingya crisis in Myanmar.² In June 2013, the AICHR Representatives participated in the "Human Rights Dialogue" organized by the Government of Indonesia to discuss the country's human rights situation report, the challenges involved and possible cooperation with AICHR.³ This dialogue, inspired by the United Nations' Universal Periodic Review, received positive feedback from AICHR Representatives.

AICHR Representatives, together with law enforcement officials⁴ from ten ASEAN countries, visited the Central Women Correctional Institution and the Criminal Court in Thailand to gain first-hand exposure and understanding of human rights, and assess the treatment of prisoners. This visit was held during the five-day Advanced Programme on Human Rights: Training of the Trainers⁵ in Bangkok in November 2013.

At the national level, the Indonesian representative to the AICHR introduced an annual discussion forum on human rights issues (called Jakarta Human Rights Dialogue or JHRD) in November 2012⁶ that brought together all stakeholders on human rights in

the country.⁷ The Thai Representative to the AICHR decided to replicate this initiative by organizing the Bangkok Human Rights Dialogue in 2014 with access to justice as the theme.

These initiatives reinforce the fact that despite its limitation, AICHR has generated different platforms for subregional debate on human rights and clarified the ASEAN dimension on responses to human rights issues. AICHR also generated both bilateral and multilateral human rights discussions among ASEAN member-states and with Dialogue Partners (such as the ASEAN and China Strategic Partnership,⁸ and ASEAN-EU Partnership⁹).

The ASEAN Human Rights Declaration (AHRD),¹⁰ adopted (along with the Phnom Penh Statement) by the ASEAN Heads of State/Government during the 21st ASEAN Summit on 18 November 2012 in Phnom Penh, was criticized for having its deliberation process "shrouded in secrecy."¹¹ The United Nations Office of High Commissioner on Human Rights (OHCHR) opined that the AHRD "retains language that is not consistent with international standards,"¹² while the High Representative of the European Union for Foreign Affairs and Security Policy, Catherine

Ashton, believed that the adoption of the AHRD was an “important step towards strengthening the protection of human rights in Asia.”¹³

Notwithstanding the Declaration on the Elimination of Violence Against Women and Elimination of Violence Against Children in ASEAN adopted during the 23rd ASEAN Summit (October 2013) in Bandar Seri Begawan, AICHR is considering drafting an ASEAN Convention on the Prevention and Elimination of Violence against Women and Violence against Children (ACEVAWC). Civil society organizations do not support the adoption of another human rights instrument by ASEAN. I argue that having a new human rights convention is not an answer to the lack of protection of human rights in the subregion.¹⁴ What is needed is the implementation of commitments under the existing international human rights conventions as well as ASEAN human rights declarations. Why should there be new women’s rights standards when international standards exist such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)?

AICHR is defining its relationship with human rights stakeholders (including civil society organizations, national human rights institutions, academe and international organizations) in the subregion by considering the adoption of Guidelines on the AICHR’s Relations with Civil Society Organizations. But differing opinions among AICHR

members hinder the adoption of such Guidelines.

Nevertheless, AICHR has organized consultation with sectoral bodies, experts and civil society organizations on the ASEAN Human Rights Declaration (AHRD) while it was being drafted during the 2011-2012 period¹⁵ despite the refusal of ASEAN to make public the working draft of the declaration, and on the assessment and review of its terms of reference (TOR) in 2014.¹⁶ Indicating a change of view regarding relationship with the national human rights institutions (NHRIs) in the subregion, the AICHR Representatives held a long-requested meeting with the NHRI representatives on 29 April 2014 during the Consultation with Stakeholders on the Contribution to the Review of the Terms of Reference (TOR) in Jakarta.

AICHR has received requests for human rights opinion/advise regarding HIV/AIDS test for migrant workers and undergraduate level human rights curriculum. Unfortunately, to date, AICHR has not issued its opinion on these matters.

Challenges

As a consequence of the adoption of the ASEAN Charter and the birth of human rights bodies, ASEAN faces high expectation of delivering on its human rights commitments. Those commitments are set against the subregional context of continued widespread poverty, growing income inequality, impacts of climate

change and greater subregional integration. The political stability in Southeast Asian countries remains uncertain and even volatile. National turbulence can spill over borders and limit the ability of Southeast Asian countries or ASEAN as an institution to support human rights and democracy.

In 2013 the Southeast Asian Press Alliance (SEAPA) reported that freedom of expression was deteriorating in more Southeast Asian countries¹⁷ with the enactment or implementation of restrictive laws, on-going or intensified violence against journalists and human rights defenders who offer dissenting or critical views, and widespread impunity for perpetrators of violations of freedom of expression.¹⁸ In April 2014, Brunei Darussalam introduced the death penalty for several offences¹⁹ in its *sharia* penal code that created a climate of fear. Singapore required online news sites that attract at least 50,000 visitors per day to obtain an annual license, and to remove content considered objectionable by the state within twenty-four hours.²⁰ Furthermore, Internews Europe’s study revealed that across the “region, the diminishing ability of citizens to express themselves openly and freely without recrimination is an alarming trend.”²¹

Alongside the low ratification rate of key United Nations human rights instruments, Southeast Asian countries suffer from weak protection of political rights²² and civil liberties.²³

During the last five years, AICHR has failed to build its capacity to adjust to the changing context and structural challenges to protecting human rights. This is partly reflected in AICHR's work priorities, which do not appear to be guided by the need to strengthen the subregional system but to showcase its plans. Similarly, since its inception, AICHR has faced major problems regarding capacity, independence, ability to balance its role as a political body and as a human rights commission, ability to engage its stakeholders, work priority-setting and self-perception. It is significant to note that the lack of technical and financial support from ASEAN member-states contributes to the slow progress in the work of AICHR.

Beyond the institutionalization of human rights, AICHR needs to move toward genuine protection and realization of human rights within the borders of ASEAN. AICHR should address the problem with a proactive and robust system for dealing with subregional crises and advancing common projects.

AICHR is currently concentrating much on the review of its TOR. At the first regional consultation on 29 April 2014,²⁴ the civil society presented an assessment report on the work of AICHR during the last five years, stressing the following main points:

- a. The lack of protection mandate and absence of dedicated secretariat with human rights expertise are the main hindrances to AICHR's work. Furthermore, AICHR has

not been able to perform its functions regarding the

1. Establishment of institutionalized relationship with stakeholders including the civil society and NHRIs (Art. 4.8, and 4.9),
 2. Collection of information on the promotion and protection of human rights by ASEAN member-states (Art. 4.10),
 3. Encouragement of ASEAN member-states on ratification or accession to international human rights instruments (Art. 4.5),
 4. Full implementation of the ASEAN human rights-related instruments (Art. 4.6),
 5. Advisory and technical assistance to ASEAN sectoral bodies (Art. 4.7), and
 6. Development of common approaches and position on human rights (Art. 4.11);
- b. There is contradiction between the international definition of rule of law, good governance, respect for fundamental freedoms, sovereignty and the non-interference doctrine, on the one hand, and their formulation in ASEAN documents on the other hand. The continuing lack of respect for human rights and impunity in the subregion undermine the effort to make the ASEAN human rights standards at

par with the international standards;

- c. There are gaps in the understanding of the role of regional human rights mechanisms in ASEAN due to lack of access to AICHR at the national and subregional levels;
- d. There is lack of transparency in the work of AICHR;
- e. The dominance of representatives selected by governments, rather than those preferred by the local human rights stakeholders, contributes to the lack of independence of AICHR.

The civil society recommendations to the AICHR are as follows:

- a. Make the rights of vulnerable groups prominent in its programs;
- b. Give more attention to inter-generational rights regarding sustainable development;
- c. Make its website accessible to persons with disabilities and migrant workers;
- d. Raise the human rights awareness of the people in ASEAN and have more training activities involving stakeholders;
- e. Engage civil society more actively in the decision-making process, and open space for stakeholder participation at the national and subregional levels;
- f. Lobby for protection mandate that includes undertaking precautionary measures, creation of monitoring and complaint

mechanisms, country visits, country peer-reviews; and adopting communication strategy and alliance with the media;

- g. Adopt creative ways of overcoming the difficulty of making decision by consensus;
- h. Strengthen the provision on institutionalized platform of cooperation with NHRIs and other national actors in the revised TOR;
- i. Provide adequate support to the AICHR secretariat and national boards;
- j. Include in the revised TOR a provision on the accountability of ASEAN member-states for failure to fulfill international human rights obligations under ratified or acceded to international human rights instruments. AICHR may provide appropriate assistance to fulfil those obligations.

Opportunities

ASEAN is drafting its post-2015 Community Blueprints while preparing to launch the ASEAN Community Integration in 2015. This situation provides an opportunity for developing a road map in Southeast Asia on integrating human rights in the ASEAN community pillars. Despite the many references to “people-oriented” and “people participation” in various ASEAN instruments, there is no mechanism that facilitates the representation of people’s interests and voices in the structure of ASEAN. People in Southeast Asia should be able to see the importance of ASEAN,

and thus be able also to monitor and assess or evaluate it.

Aside from the current review of its TOR, AICHR has the chance to move in a different direction with a new set of Representatives by 2016. The current AICHR Representatives from Indonesia, Brunei Darussalam, Malaysia, Myanmar and the Philippines will end their term by October 2015. There is an opportunity for AICHR to have all future Representatives who are independent-minded and have expertise in human rights.

The AICHR should be able to work with the Southeast Asia Network for National Human Rights Institutions (SEANFI), whose six member-NHRIs²⁵ have agreed to adopt a common plan of action on cross-border issues such as anti-terrorism, realization of economic, social and cultural rights, human rights education, human trafficking and migrant workers.²⁶ The work of SEANFI member-NHRIs on receiving and investigating complaints from victims of human rights violations, monitoring human rights program implementation, investigating situations, carrying out field visits and offering remedies can support the work of AICHR at the subregional level.

Similarly, AICHR has the opportunity to work with members of parliament in Southeast Asia through their organizations such as the ASEAN Parliamentarians for Human Rights (APHR).

Finally, AICHR should maximize the existence of civil

society groups in most Southeast Asian countries by giving them the opportunity to be involved in subregional activities, enhance their capacity to work on subregional issues and develop subregional advocacy strategy.

A Final Note

The creation of AICHR is one of the landmarks of a changing ASEAN in the sense that “development” in this subregion is no longer only about economic growth. An imperfect AICHR has been anticipated, the precise reason behind the review provision in its TOR. The review facilitates a gradual correction of the weaknesses of AICHR. Furthermore, close collaboration among stakeholders that maximizes every possible opportunity of making AICHR fulfill its mandate ensures that the strengthening of human rights protection within ASEAN becomes an irreversible process.

Yuyun Wahyuningrum is the Senior Advisor on ASEAN and Human Rights of the Human Rights Working Group (HRWG) Indonesia.

For further information, please contact: Yuyun Wahyuningrum, Human Rights Working Group (HRWG) Indonesia, Lobby floor, Jiwarsaya Building, Jl. R.P. Soeroso No 41 Gongdanggia, Menteng, Jakarta 10350 Indonesia; ph (6221) 314-3015; fax (6221) 314-3058; e-mail: wahyuningrum@gmail.com; www.hrwg.org.

Endnotes

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(Continued on page 14)

Human Rights System for SAARC: Problems and Perspectives

Gyan Basnet

The South Asian Association for Regional Cooperation (SAARC) was established in 1985 with the great hope of promoting subregional cooperation among the South Asian countries. Today, with one-fifth of the world's population, the countries of South Asia face formidable challenges resulting from poverty, under-development, and conflict within and among themselves. Their low economic production, unemployment and population pressure are not helped by historic exploitation and by other adverse legacies. In addition, deep-rooted divisions and animosities throughout the subregion make any commonality across nations impossible, and the whole subregion has to grapple with gross violations of human rights.

Consequently, governments in the subregion lack effective initiative and political commitment needed to meet their obligations to respect, protect and fulfill human rights and fundamental freedoms. Internal conflicts, civil strife, poverty and so-called anti-terror legislation and measures have resulted in violations of the civil liberties of the people. The subregion is one of the world's most militarized areas with states needing to protect themselves against their own neighbors. Its prospect is grim.

There is no deep commitment to human rights, and none of the states is willing to acknowledge that any solution to their problems might be found subregionally.



Many questions need to be considered today. Has SAARC achieved anything in nearly three decades of existence? Why, compared to others, does the subregion remain so backward in terms of everything? While human rights mechanisms exist in other regions or subregions of the world: why have the SAARC countries home to a fifth of the world's population never thought of having one? Can a subregion that is so politically, socially and economically volatile afford to go on ignoring this issue? Does subregional integration have any future in South Asia? What might enhance its chances? Is there any hope for SAARC itself? Is it not time for it to redefine itself with a more dynamic pace of progress and evolution? The very diversity of South Asia demands a gradual implementation of conceptual steps that could build towards a

distinct regional identity. One example of such conceptualization could well be the establishment of a SAARC human rights mechanism.

Setting up a Mechanism

Why might a separate charter on human rights be so important for SAARC? What would it add to existing practices? SAARC member-states have already signed several conventions on narcotics, trafficking in women and children for prostitution, and the promotion of child welfare. There have also been several agreements on food security and various social issues. However, there has been no convention focusing specifically on human rights and fundamental freedoms. A subregional instrument could be regarded as an appropriate complement to the human rights instruments of the United Nations. Regional human rights mechanisms are already established in the Americas, Europe, Africa and most recently in the Arab States. But South Asia, one of the remaining major geographic areas in the world, has no human rights mechanism of its own. The 2004 Arab Charter on Human Rights of the Council of the League of Arab States has been in force since 2008. The Charter contains a number of

human rights and fundamental freedoms of the people, and provides for the election of a seven-person Committee of Experts on Human Rights to consider states' reports and to monitor states' compliance with the Charter.

Numerous common problems affect most SAARC member-states, e.g., torture, human trafficking, internal displacement owing to conflict, refugees, rights over resources, urban shelter and demolition, domestic violence against women, the death penalty, extra-judicial detention, and forced disappearances. A few countries in the subregion have national human rights institutions. All have, or in the case of Nepal should soon have, a written constitution under which human rights are recognized as being fundamental. Despite these provisions, however, there is a deteriorating human rights situation throughout the subregion due to the anti-terrorism measures adopted by some of the countries, internal political crises and civil strife and the hostility of governments towards human rights despite their claims to be democratic. The subregion has suffered from the absence of rule of law and constitutionalism and from a culture of impunity. Is there not then an urgent need to formulate a SAARC human rights mechanism?

Majority of SAARC member-states have still to ratify the optional protocols to the International Convention on Civil and Political Rights (ICCPR) and the Convention on the Elimination of All Forms of

Discrimination against Women (CEDAW). Bhutan, moreover, has still to ratify the ICCPR, the International Convention on Economic, Social and Cultural Rights (ICESCR), and the Convention against Torture (CAT). Even where treaties have been ratified, implementation has been limited by reservations on the part of some countries that apply a narrow interpretation to treaties relating to civil and political rights, and by a restricted political commitment to implement any economic, social and cultural rights. An effective human rights mechanism would ensure the protection and promotion of human rights throughout the subregion. It could cover especially such common issues as the rights of migrant workers, human trafficking, minority rights, and the right to development. Most importantly, it could challenge the existing culture of impunity and lawlessness. Such a mechanism might also provide redress, alternative to existing international processes and procedures, in less costly, more accessible and more effective manner.

The prospect of ideological homogeneity across the subregion would seem to be anything other than bright. With over 60 per cent of the population still forced to survive below the poverty line, how could the subregion even claim to be democratic? South Asia faces serious challenges in consolidating democracy and strengthening and promoting the human rights and the fundamental freedoms of its people. It should now seriously consider establishing its own

human rights mechanism similar to those of the Inter-American or European systems. The mechanism would certainly help states to effectively promote and protect human rights and fundamental freedoms within their jurisdiction. It can support the promotion and respect for international human rights laws throughout South Asia, and facilitate common understanding of universal human rights issues, norms, values and perspectives among citizens of SAARC countries.

By way of example, the Organization of American States has a human rights protection system in the Americas that allows both states and individuals to file complaints. Under the American Convention on Human Rights, two bodies protect, promote and monitor human rights. The Inter-American Commission on Human Rights has the primary function of raising complaints against an American state found to have violated human rights, and the Inter-American Human Rights Court has jurisdiction over contentious cases mostly forwarded by the Commission. Under the Inter-American system, both the Commission and the Court have made a major contribution to recognizing human rights, developing human rights jurisprudence and protecting human rights in the Americas. Elsewhere, the Council of Europe drafted a European Convention on Human Rights after the Second World War in response to a call by Europeans from all walks of life for such instrument. The Convention was

designed to incorporate a traditional civil liberties approach to securing effective political democracy. The Convention created the European Court of Human Rights in Strasbourg, and any person who feels that a state party has violated his or her rights under the Convention, can take his or her case to the Court. Judgments confirming violations are binding on all.

To be both credible and practically effective in meeting both its promotion and protection requirements, a future SAARC human rights mechanism, based on a human rights charter, would require a minimum set of characteristics. These would include the power to receive and decide upon individual and inter-state complaints of human rights violations by a state party. It should have the potential to develop additional mechanisms such as special procedures and subsidiary bodies on thematic issues, working groups, etc. It can consist of a SAARC Human Rights Commission with broad powers to investigate, make site visits for fact finding, receive reports and complaints by states and individuals, and a SAARC Human Rights Court, empowered to make binding decisions on human rights issues and grant reparations for victims of human rights violations by states. The human rights mechanism, as with other regional practices, would be able to cooperate with international human rights mechanisms. This would strengthen the existing human rights framework and help to overcome procedural and institutional weaknesses in both

domestic jurisdictions and in the international system itself. This would make up for any lack of expertise or experience in human rights jurisprudence and help to ensure the effective implementation and enforcement of human rights norms and standards. A future SAARC charter on human rights, similar to that of the Inter-American system would be a great breakthrough for South Asia.

The United Nations High Commissioner for Human Rights (Navi Pillay) reminded SAARC member-states in 2011 about the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in 1993, that "recognised the value of intergovernmental systems to promote and protect human rights at the regional and sub-regional level, and [that] their development has been continuously encouraged by the General Assembly and Human Rights Council." The High Commissioner noted that while a regional human rights mechanism for the whole Asia-Pacific has not progressed for the past twenty years, the establishment of subregional mechanism has made a headway as shown by the Association of Southeast Asian Nations (ASEAN) whose human rights mechanism's "mandate and composition...have several weaknesses, [yet] they provide an important source of inspiration and lessons learned for SAARC countries in embarking on a similar journey." The High Commissioner asked: So will SAARC prove ready to rise to this challenge?¹

Human Rights Culture and Challenges

So far South Asian countries have been reluctant to advance the subregional project, and the provisions of the SAARC Charter² have largely been ignored. Subregional cooperation is still at a very rudimentary stage, and there is little evidence of any real desire to act on a subregional basis by building trust and avoiding force. A proper subregional human rights mechanism might just provide a real opportunity to establish a favorable political environment leading to a restructuring of the subregion politically, socially and economically.

Why should human rights not be the guiding force for South Asian politics and for the future development of its democratic processes? Human rights values are above partisan politics and above the narrow interests of one or two countries. They could provide a path to common goals and agendas. Establishing the proposed subregional institution to monitor, promote and consolidate human rights would bring the SAARC member-states together in order to achieve common aims and ambitions towards peace and prosperity. A subregional human rights body could become a common forum and a milestone in bringing South Asian society together as a single body of humanity despite its religious, political, cultural or ideological differences.

Of course, there would be enormous challenges in establishing such a subregional

human rights mechanism in South Asia because of the legal and geo-political hurdles. The politics of the subregion continue to be affected heavily by continuing tensions in Indo-Pakistani relations. There are highly contentious issues, too, in South Asia – water, migrant workers, human trafficking, minority and indigenous communities, refugees, border disputes, etc. These would need to be settled through bilateral and multi-lateral mechanisms. If the SAARC member-states fail to address these matters the very future of the region will be bleak indeed. Political trans-border commitments are essential. Now, indeed, is the time to create a SAARC Charter on Human Rights in treaty form. This would be a consensus document, and it would be the primary focus of all SAARC member-states. This is essential.

The present-day diversity of South Asia demands that it shows great determination in searching for an identity based on parallel visions. To be successful, it will have to rely on political logic and not on sentimentalism and rhetoric. Effective cooperation between all stakeholders, including non-governmental organizations and civil society, is essential. The latter may loudly call for the promotion and protection of human rights, but how far have their calls succeeded in achieving cooperation and integration? Subregional cooperation over human rights needs to be backed by strong political will and commitment by SAARC member-states as they seek to develop a strong South Asian identity.

Finally, SAARC lacks not only political democracy but also the democratization of social relations - indeed, a democratic culture itself. The roots of democracy in South Asia lack depth. Where is the political sincerity? Where is the commitment? Where is the political culture? Where is the culture of human rights? Most importantly, in South Asian politics all resources, including the economy, have for centuries been controlled by a few political elites (or dynasties) leaving the grassroots bereft of feelings for government or state. Abject poverty, malnutrition, illiteracy and gender inequality sadly ravage the lives of vast numbers of the people. In the absence of the right political atmosphere no economic, political or social integration is feasible. This is why the basic norms and values of human rights, guaranteed by international human rights covenants and national constitutions, have to be a guiding force for economic, social, developmental and political cooperation.

A single human rights mechanism for South Asia could eventually create the dynamic for pulling the whole subregion together. The process could provide a great opportunity to shape a new subregional identity. Since human rights violations occur often at a very local level, e.g., at a local police station, within local industry, and even at the kitchen table, the impetus for change must come internally from within the population. However, questions remain. Can South Asia really gear itself for effective subregional human

rights cooperation? Can political interests become sufficiently harmonized in order to promote cooperative trust and mutual confidence throughout the region? Are politicians ready to change their attitude? Establishing a subregional human rights mechanism should be viewed as a vital departure point for all SAARC agendas; indeed, it needs urgently to become the alpha and omega of all SAARC's future plans, programs and cooperation.

Gyan Basnet, who holds a PhD and LL.M degree in International Human Rights Law at Lancaster University, U.K., is a Columnist, Lecturer & Researcher in International Human Rights Law and a Human Rights and Constitutional Law Lawyer in the Supreme Court and Subordinate Court of Nepal.

E-mail: gyanbasnet@aol.com.

Endnote

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- 2 The full text of the SAARC Charter is available at <http://saarc-sec.org/saarc-charter/5/>.

Merging Business and Human Rights in China: Still A Long Way to Go

Huang Zhong and Qian Cheng

Respect for human rights by Chinese business companies is a new concept that has to be incorporated into the Chinese corporate culture amidst the continuing high-speed growth of Chinese industries. Ironically, the image of Chinese corporate irresponsibility may become the main driver for Chinese business to link its operations to human rights.

Legal Policy

The 2004 amendments to the Constitution of the People's Republic of China include guarantees regarding private property¹ and human rights. Article 33 of the chapter on fundamental rights and duties of the Constitution provides: "The state respects and guarantees human rights."²

The Chinese government sees these new constitutional provisions as a step towards Chinese democracy and a sign of recognition by the Communist Party of China (CPC) of the need for change in view of the rise of upper and middle classes, who want protection of their property.

However, constitutional rights in China are not bases for legal action since constitutional court and judicial review mechanism do not yet exist. This situation is

deemed to be the greatest defect of the Chinese legal system, showing gap between legal rhetoric and judicial practice. Nevertheless, the constitutional provisions on private property and human rights stipulate that the Chinese government shall endeavor to respect and promote the property and human rights of the individual. They form a strong constitutional basis supporting the development of link between business and human rights.

The Chinese government during the 2005 National People's Congress, adopted the "Socialist Harmonious Society" approach that officially changed China's focus from economic growth to overall societal balance and harmony. The idea is clearly visible in banners all over China.³ As a result, companies were pressured to consider corporate social responsibility in order to fulfill the new government approach.

In 2012, the Chinese government adopted its second National Human Rights Action Plan (2012-2015) and explained that

[Th]e formulation of the National Human Rights Action Plan is an important measure taken by the Chinese government to ensure the

implementation of the constitutional principle of respecting and safeguarding human rights. It is of great significance to promoting scientific development and social harmony, and to achieving the great objective of building a moderately prosperous society in an all-round way.⁴

The National Human Rights Action Plan has become a basis for assessing the work being done by the Chinese government on human rights.

Corporate Social Responsibility

In January 2008, the State-Owned Assets Supervision and Administration Commission of the State Council (SASAC) published the *Guide Opinion on Social Responsibility Implementation for State-owned Enterprises Controlled by the Central Government* (Guide Opinion).⁵ The Guide Opinion is regarded as an important legal document since it explicitly expresses its purpose of comprehensively implementing the "spirit of the 17th CPC National Congress and the Scientific Outlook on Development, and [giving] impetus to state-owned enterprises (SOEs) directly under the central government (CSOEs) to earnestly fulfill corporate social responsibilities,

so as to realize coordinated and sustainable development of enterprises, society and environment in all respects.”⁶

SASAC’s explanation on the background of the Guide Opinion clearly shows that the Guide Opinion is meant to meet the new global trend, namely, the proliferation of corporate social responsibility (CSR) initiatives including the United Nations (UN) Global Compact, ISO 26000, and multinational companies’ codes of conduct and sustainability report. However, as the spokesman of the SASAC stated, the CSR principles for the CSOs should not only be in line with the international trend but also be consistent with the national and organizational reality in China.⁷

Grievance Mechanisms

China has laws on judicial grievance mechanisms. The Criminal Procedure Law aims to “... protect the citizen’s personal rights; their property rights, democratic rights and other rights...”

However, the court system in China has various problems that hinder ordinary people’s access to justice. Financial and human resources supporting the operation of the courts are not evenly available in urban and rural areas; with the urban areas receiving more resources. The court system also suffers from several problems that required the CPC Central Committee to issue a communiqué to overhaul the judicial system in order to “uphold the constitution and laws, deepen reforms in administrative law

enforcement and ensure independence and fairness in prosecuting bodies and courts, as well as to improve judicial practice and protection of human rights.”⁸

Since the court system could not successfully resolve the rising number of conflicts and meet public expectation, people with grievances may seek justice through other means, such as filing petitions to government authorities (*Xinfang*) in Beijing. In practice, petitions that bypass local authorities have been viewed as a source of unrest. Regulations issued in 2005 attempted to compel local officials to improve their system of assisting petitioners and thus reduce the number of petitioners seeking help in the capital.

While the Labor Law, the Law on Employment Contracts, the administrative regulations enacted by the State Council, the ministerial rules, and the judicial explanations of the Supreme People’s Court have contributed to the protection of labor rights, the real situation in the factories regarding labor protection is still grim. Workers are normally not properly informed about the details of the labor contract before signing, which can cause the invalidation of the contract. In many cases, workers have labor contract with labor dispatch agencies. As a result, the factories may arbitrarily refuse to accept the workers, leading to loss of job security.⁹ Considering that the All China Federation of Trade Unions (ACFTU) does not function as the legitimate agency representing all workers,

especially rural migrant workers, many workers face serious obstacles in settling their grievances.

Response to International Initiatives

Since its launch in 2002, the Global Compact Local Network China has continuously been developing and expanding. In recent years, a large number of both state-owned and private companies have joined the initiative; so far, the total number of Chinese participants of the UN Global Compact has been over three hundred companies.

Transnational corporations are typically under pressure from their stakeholders to adopt specific CSR principles and policies. As a result, incorporating CSR into supplier sourcing decisions are practices that would diffuse CSR policies throughout Chinese companies. For example, major automotive manufacturers for years have required Chinese suppliers to have ISO 14001 environmental management system standards. A new ISO business standard, ISO 26000, introduced in 2010, provides guidelines for social responsibility.

Issues Involving Companies

Chinese companies have been involved in several issues affecting the environment, health of people in the community, workers and consumers. Industrial pollution caused the daily pollution index in major cities to rise at dangerous level, and led to the rise of “cancer villages” where the number of residents with

cancer is disproportionately high. Among the labor issues, the lack of independent labor union is a major concern. For consumers, the recent spate of food safety issues (tainted milk for example) have involved big companies and raised alarm on the safety of Chinese goods in general.

Case Study

PetroChina Company Limited (PetroChina) is a CSOE that has become one of the leading oil companies in the world. The controlling shareholder of the PetroChina is the state-owned enterprise China National Petroleum Company (CNPC).¹⁰ PetroChina has expanded its business in many countries and regions of the world, in cooperation with other leading energy companies.

PetroChina has no specific department dealing with human rights affairs; however it has human rights initiatives, and tries to address human rights issues under its “sustainable development,” “people oriented approach,” and corporate social responsibility programs. It established the Health, Safety and Environment Committee under its Board of Directors to make policies related to environmental rights, labor rights, and indigenous people’s rights.

Although PetroChina does not operate in Sudan, it has been accused of complicity with the human rights violations committed by the Sudanese government against the people in southern Sudan during the so-called Darfur crisis. Its major shareholder, CNPC, has been

implementing oil projects in southern Sudan for many years including during the time of the Darfur crisis.

NGOs filed in 2008 a formal complaint with the UN Global Compact Board against PetroChina for the alleged acts of CNPC that violate human rights in Sudan. The UN Global Compact Office responded that since CNPC is not a signatory, it could not be subject to the measures available under the terms of the UN Global Compact. The Vice-Chair of the UN Global Compact also states that “companies have to make their own decisions based on whether they feel able to operate in line with the principle they subscribe to as well as any advice or sanction from their home government and of course whether there are United Nations sanctions involved.”¹¹

This case opens a debate on the extent of liability of a company for the human rights abuse, or complicity in human rights violations, attributed to another company which is its major shareholder. The complaint of the NGOs is based on the premise that PetroChina has close financial engagement with its major shareholder (CNPC) in the Sudan oil projects and thus should be made responsible for the human rights violations committed by the Sudanese government, a partner in the oil projects.

Additionally, the case provided an opportunity for the UN Global Compact to explain how its Integrity Measures system works.

Final Note

It is necessary for the companies to develop their own internal systems based on human rights-based approach to access to justice principles in order to uphold the objectives set by both the Chinese government and the international community on the proper role of business in serving justice.

Huang Zhong is the Program Manager of the Wuhan University Public Interest and Development Law Institute (PIDLI), while Qian Cheng is a PhD candidate at Wuhan University School of Law, and a Greater China Researcher at Business and Human Rights Resource Centre.

For further information, please contact: Huang Zhong, Wuhan University Public Interest and Development Law Institute (PIDLI), Wuhan University School of Law, Mailbox 214, Wuhan, Hubei 430072 China; ph (86 27) 6875 3729; fax (86 27) 6875 3624; e-mail: office@pidli.org; www.pidli.cn/.

* This article is an excerpt of the report of the same title prepared by the authors included in *Bridging Human Rights Principles and Business Realities in Northeast Asia* (Kuala Lumpur/Osaka: HURIGHTS OSAKA and SIRD, 2014).

Endnotes

- 1 Article 13 of the Constitution states: “The lawful private property of citizens is inviolable.”

- 2 The full text of the Constitution is available at http://english.gov.cn/2005-08/05/content_20813.htm.
- 3 "China's Party Leadership Declares New Priority: 'Harmonious Society,'" *The Washington Post*, 12 October 2006, available at www.washingtonpost.com/wp-dyn/content/article/2006/10/11/AR2006101101610.html.
- 4 The National Human Rights Action Plan of China (2012-2015), http://news.xinhuanet.com/english/china/2012-06/11/c_131645029.htm.
- 5 SASAC, Guanyu Zhongyang Qiye Lvxing Shehui zeren de Zhidao Yijian [The Guide Opinion on Social Responsibility Implementation for State-owned Enterprises Controlled by the Central Government], available at www.sasac.gov.cn/n1180/n1566/n259760/n264851/3621925.html.
- 6 Ibid.
- 7 See SASAC, Press Release, Q&A between the SASAC Official and News Reporters, available at www.sasac.gov.cn/n1180/n1566/n259760/n264866/3621552.html, last visited 4 March 2014.
- 8 Xinhua, "China to overhaul judicial system: communiqué," 12 November 2013, www.chinadaily.com.cn/china/2013cpctps/2013-11/12/content_17100078.htm. See also Wong Kai Shing, *CHINA: Reforming China's Judiciary*, www.hrsolidarity.net/mainfile.php/2000vol10no06/555/, last visited 11 April 2014.
- 9 Tragedies of Globalization: The Truth Behind Electronics Sweatshops, see www.chinalaborwatch.org/pro/proshow-164.html, last visited 28 April 2014.
- 10 *Annual Report 2011*, page 14.
- 11 "UN Global Compact Office responds to NGO Letter," United Nations Global Compact, January 2009, www.unglobalcompact.org/NewsAndEvents/news_archives/2009_01_12b.html.

AICHR After Five Years

(Continued from page 6)

- Threats and Opportunities*, March 2014, page 5, www.internews.eu/docs/Publications/InternewsEU_ASEAN_FoE_and_RTI_Study_2014.pdf.
- 22 Freedom House states that "[P]olitical rights enable people to participate freely in the political process, including the right to vote freely for distinct alternatives in legitimate elections, compete for public office, join political parties and organizations, and elect representatives who have a decisive impact on public policies and are accountable to the electorate. Civil liberties allow for the freedoms of expression and belief, associational and organizational rights, rule of law, and personal autonomy without interference from the state." Freedom House, www.freedomhouse.org/report/freedom-world-2012/methodology.
 - 23 Freedom House rates most of the ASEAN countries as "not free," *2014 Freedom in the World*, <http://freedomhouse.org/report-types/freedom-world>.
 - 24 First Regional Consultation on the Review of the TOR of AICHR, 28 April 2014, <http://aichr.org/news/first-regional-consultation-on-the-review-of-the-tor-of-aichr/>.
 - 25 These are the NHRIs in Indonesia, Malaysia, Myanmar, Philippines, Thailand and Timor Leste.
 - 26 South East Asia NHRI Forum, <http://seanf.asia/index.php/about-us/89-south-east-asia-nhri-forum>. SEANF adopted the 2007 Declaration of Cooperation that provides for member-NHRIs to "do whatever possible to carry out jointly, either on bilateral or multilateral basis, programmes and activities in areas of human rights identified and agreed upon at the meetings," and gradually develop regional strategies for "human rights promotion and protection."

Human Rights Events in the Asia-Pacific

Mekong Workshop on Global Citizenship Education

The Sub-regional Workshop in Mekong Cluster - EIU: Global Citizenship Education for a Culture of Peace and Sustainability held on 17-19 June 2014 in Yangon introduced the new United Nations project on Global Citizenship Education (GCE). The new project aims to promote education that equips learners to be creative and responsible global citizens. This represents an emerging perspective on education on empowering students to enable them to assume active roles in resolving global challenges. Educators from Mekong countries (Cambodia, Burma/Myanmar, Lao PDR, Thailand, Vietnam) and Singapore attended the subregional workshop. They discussed how GCE could be integrated into the curriculum of teacher education institutions as well as into the school system as a whole. The keynote speech was given by the Chairperson of the Myanmar National Human Rights Commission, U Wim Mra. Human rights were discussed in relation to GCE values and practice.

The workshop was jointly organized by the UNESCO Asia-Pacific Bureau for Education (UNESCO Bangkok) and the Asia-Pacific Centre of Education for International Understanding (APCEIU).

For further information, please contact: Asia-Pacific Centre of Education for International Understanding (APCEIU), 120, Saemal-ro, Guro-gu, Seoul, Republic of Korea 152-050; ph

(82-2) 774-3933; fax (82-2) 774-3958; e-mail: info@unescoapceiu.org; www.unescoapceiu.org.

2014 Asian Symposium on Human Rights Education

A three-day 2014 Asian Symposium on Human Rights Education will be held to provide an interdisciplinary platform for academics, researchers, policy makers, human rights advocates, students and professionals. With the theme "Human Rights: The Road to Reform," the symposium will promote a greater understanding and access to human rights and help to equalize the process of globalization. The symposium will deal with problems that are widespread and complex, challenging customs and prejudices that are deeply ingrained in the social fabric of a society. Systematic discrimination and inequality affecting women, indigenous people, and minorities, to name a few, in many parts of the world, that result in varying degrees of abuse, violence, inadequate wages, forced labor, suppression of speech, and overall disempowerment will be discussed.

The symposium will be held in Hiroshima city on 2-4 August 2014 and is being organized by Presda Foundation.

For further information, please contact: Office of the Secretariat, Presda Foundation; e-mail: secretariat@presdafoundation.org; www.presdafoundation.org.

2014 Asian Girl Human Rights Award

The Garden of Hope Foundation (GOH) has launched the 2014 Asian Girl Human Rights Award. Nominees have to have the following qualifications: 1) Demonstrated outstanding achievement in the area of Asian girls' human rights and community development; 2) Inspiring survivors of trafficking, abuse, trauma, disability, violation of human rights, or other tragedies; 3) Commitment to the values of gender-equity and ability to raise social awareness on the issue; 4) Leadership experience or desire to contribute to and improve the leadership potential of the civil society sector, particularly for girls' rights; 5) Innovation in the arena of policy development and application; 6) Eagerness to lead debates and discussions during the Exchange Program of GOH; 7) Commitment to follow-up activities; 8) 18 years old or younger; and 9) Ability to interact in the English language. Nomination can be sent until 9 am (Taiwan time) on 31 August 2014, visit https://docs.google.com/a/goh.org.tw/spreadsheets/viewform?usp=drive_web&formkey=dG0xUi1fYIE2RFVfWUJjZTNhdncteFE6MQ#gid=0.

For more information, please contact: Lilian Yap, Asian Girl Campaign Coordinator, The Garden of Hope Foundation, 1F, No. 2-1, Shun-an St., Xindian District, New Taipei City 23143 Taiwan; ph (886-2) 8911-8595; e-mail: goh1014@goh.org.tw; <http://girlday.org/>.

HURIGHTS OSAKA Calendar

The most recent publication of HURIGHTS OSAKA, *Bridging Human Rights Principles and Business Realities in Northeast Asia* (2014), can now be purchased through the online bookshop (<http://bookshop.gerakbudaya.com/>) of GB Gerakbudaya Enterprise Sdn Bhd.



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HURIGHTS OSAKA, inspired by the Charter of the United Nations and the Universal Declaration of Human Rights, formally opened in December 1994. It has the following goals: 1) to promote human rights in the Asia-Pacific region; 2) to convey Asia-Pacific perspectives on human rights to the international community; 3) to ensure inclusion of human rights principles in Japanese international cooperative activities; and 4) to raise human rights awareness among the people in Japan in meeting its growing internationalization. In order to achieve these goals, HURIGHTS OSAKA has activities such as Information Handling, Research and Study, Education and Training, Publications, and Consultancy Services.

FOCUS Asia-Pacific is designed to highlight significant issues and activities relating to human rights in the Asia-Pacific. Relevant information and articles can be sent to HURIGHTS OSAKA for inclusion in the next editions of the newsletter.

FOCUS Asia-Pacific is edited by Osamu Shiraishi, Director of HURIGHTS OSAKA.

Sender: HURIGHTS OSAKA

(Asia-Pacific Human Rights Information Center)

8F, CE Nishihonmachi Bldg., 1-7-7 Nishihonmachi, Nishi-ku, Osaka 550-0005
Japan

Phone: (816) 6543-7002

Fax: (816) 6543-7004

E-mail: webmail@hurights.or.jp

Website: <http://www.hurights.or.jp>



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